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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,403	12/19/2001	Brian K. Doyle	ADV12P302A	4925

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EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/025,403	DOYLE ET AL.	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 March 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,5-8,11,12,14-20,22-27,29-33 and 35-55* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,5-8,11,12,14-20,22-27,29-33 and 35-55* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 1,5-8,11-12, 14-17,19-20, 22-27, 29-33,35-40, 48,50,51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baur et al.

Baur et al disclose food product comprising a food substrate coated with a cereal-based batter. The food substrate includes cereal-based products such as pizza dough, biscuit dough, grain-based snack, veggie burger and breakfast cereals. The batter comprises yellow corn flour, food starch, wheat flour, salt, sugars and leavening. The coated food substrate can be parfried, frozen and finished cooked at a latter time or the coated food substrate can be fully cooked. The parfried food product can be cooked to completion by conventional means such as baking by conventional oven, microwave oven, deep-fat frying or sauteing. (See columns 2-4)

The teaching of Baur et al is described above. Baur et al do not disclose a dough made of potato, a product which emulates a slice of natural food, the thickness of the food substrate, heating in a toaster, a baked product, the product is waffle, pancake o, dusting the food substrate, using dried ingredients for the coating and stabilizer such as carageenan, gum Arabic, guar gum, carboxymethylcellulose.

The ingredients used to make the batter in Baur are dry ingredients; these ingredients are combined with water before applying to the substrate. Thus, the limitation of "a coating made primarily from dry particulate starch components" is taught by Baur. With respect to claim 24, it would have been obvious to one skilled in the art to apply the coating as dried ingredients or as a batter mix depending on the amount of coating one desires on the substrate. It is well known that starch components such as flour, starch etc.. can be applied to the substrate as dry ingredients or as a batter. For

example, one can coat a piece of fish in the flour before frying or one can applied a slurry of flour to the fish before frying. With the slurry, the coating will be thicker and adhere more firmly to the piece as oppose to the dry flour. Both methods are well known in the art and it would have been obvious to use one or the other; applicant also discloses the coating can be applied as dry ingredients or as a batter/slurry. It would have been obvious to make the dough out of any ingredients depending on the taste desired. It would also have been obvious to apply a batter coating to any dough product when it is desired to obtain crisp outer coating; the selection of the food substrate would have been an obvious matter of choice. It would also have been obvious to make the product in any shape and form; this is a matter of design form and it would have been a matter of preference. It would also have been obvious to make the product to have any varying thickness; this is a matter of choice. While Baur et al teach frying the product, it would have been obvious to bake the product if it is desired to reduce the fat content and a baking texture is desired. It would also have been obvious to dust the substrate with dried ingredient before coating to obtain a smooth coating; this is well known in the art. It would have been obvious to add a stabilizer such as gum or carboxymethylcellulose or carrageen because all these additives are well known thickening agents that are commonly added to dough product. The gum functions to absorb moisture, or to increase the viscosity of the product. Adding an additive for its art-recognized function would have been obvious to one skilled in the art.

Claims 41-47, 49, 52,54,55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baur as applied to claims 1-3,5-8,11-17,19-20, 22-27, 29-33,35-40 above, and further in view of Haverkos et al.

Baur et al do not disclose applying a slurry comprising rice flour and dextrin to the coating.

Haverkos et al disclose a coating composition which includes starch and dextrin to food substrate. The dextrin promotes crispiness and enhances the shell-like texture to lock in the moisture. The starch can be rice starch. (see col. 3 ines 10-20)

It would have been obvious to one skilled in the art to apply a slurry containing dextrin to the Baur et al product when desiring to further enhance the crispiness and to lock in the moisture. It would have been obvious to also include rice flour to provide texture because food coating typically contains a starch component such as flour or starch.

In the response filed March 1, 2004, applicant argues Baur et al do not disclose moldable, shape-retaining potato-based dough as required by the claims. This argument is not persuasive. Baur et al disclose food substrate such as cereab-based products including pizza doughs, biscuit dough, grain-based snacks. Pizza dough and biscuit dough are used to form pizza crust and biscuit. Pizza crust can be formed in a round shape or rectangular shape and biscuit usually comes in a round product. It is not seen how these products are not moldable, shape-retaining product. As to the dough being a potato-based dough, the selection of the type of flour or ingredients to make the dough depends on the type of product made and the taste, texture or flavor

desired. For example, it would have been obvious to make potato biscuit which is made from a potato-based dough or it would have been obvious to make a potato snack product. The use of potato in making food product is well known in the art; for example, there are potato bread, potato pancake, potato snack, potato biscuit etc... Applicant further argues the Baur et al dough contains significant amounts of gluten which makes it virtually impossible to have shape-retaining dough. This argument is not supported by factual evidence. Pizza crust has a define shape and the dough that is used to make it does not fall apart; thus, the dough is a shape retaining dough. The basis of applicant's argument is unclear and applicant does not present any evidence to for support. There are many many products made from flour containing gluten that have definite shape; a few example are bread, sugar cookies, pasta, noodle, biscuit, pizza etc.... Applicant argues the argument is based on hindsight. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

With respect to the Haverkos et al reference, applicant argues the addition of rice flour is not obvious in view of the disclosure of rice starch because rice starch is substantially soluble while rice flour is substantially insoluble. Applicant has not

presented evidence to show that rice flour is insoluble; rice starch is obtained from rice; thus, the rice flour will also contain the starch unless the starch portion is removed. The specification does not disclose the starch is removed from the rice flour. It is known in the art to use starch or the flour interchangeably in some food applications. For example, in coating food product for frying it is known to dust it with flour or to dust it with starch or in making gravy or sauce, flour or starch is often used for thickening.

Applicant's arguments filed March 1, 2004 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 14, 2004

LIEN TRAN
PRIMARY EXAMINER
Group 1700